United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 09-393**
	)	**Issued: October 9, 2009**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Oklahoma City, OK, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 24, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decision dated October 23, 2008 that denied her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that her need for medical treatment commencing in 2007 was a consequence of her right wrist contusion and sprain.

FACTUAL HISTORY

On December 20, 2002 appellant, then a 45-year-old electronics technician instructor, filed a traumatic injury claim alleging that on December 17, 2002 she injured her right hip and right wrist when tiles on a raised floor collapsed causing her to fall into the floor. She did not stop work. The employing establishment received notice of appellant's injury on

December 20, 2002. At the time, there was no lost time or medical expense and the claim was placed in appellant's medical folder.[1]

On May 6, 2008 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit such evidence. Appellant submitted an April 28, 2008 report from Dr. Robert Unsell, a Board-certified hand surgeon, who noted her complaint of bilateral wrist pain on the right worse than left. Dr. Unsell noted that appellant had sustained a fall approximately six years prior involving the right wrist. He indicated that appellant also had a history of mucous cyst surgery on several fingers. Dr. Unsell diagnosed right long finger mucous cyst, early right thumb carpometacarpal (CMC) arthritis and possible peripheral nerve root compression. On May 1, 2008 Dr. Donald Adams, a Board-certified physiatrist, noted that an electromyogram (EMG) revealed that the ulnar-innervated muscle of the forearms and hands demonstrated membrane instability. He also found abnormal motor unit configurations and diminished motor unit recruitment patterns. Dr. Adams further noted that there was evidence of bilateral ulnar neuropathy. In a May 2, 2008 magnetic resonance imaging (MRI) scan of appellant's right wrist, Dr. Weyton Tam, a Board-certified diagnostic radiologist, found mild subchondral edema and mild degenerative subchondral cysts to the radial dorsal aspect of the base of the first metacarpal bone. He also found degenerative juxta-articular osteophytes to the first carpal metacarpal joint. Dr. Tam diagnosed mild right first carpometacarpal joint arthritis. In reports dated May 7 and 21, 2008, Dr. Unsell diagnosed bilateral cubital tunnel syndrome, right long finger mucous cyst and right thumb CMC degenerative arthritis.

The Office also requested additional evidence on June 16, 2008. In response, appellant submitted reports from Dr. Kenneth Hieke, a Board-certified hand surgeon, dated February 4 and 11, 2008 noting appellant's complaint of infection. Dr. Hieke determined appellant's wound was progressing well with no sign of infection.

By decision dated July 16, 2008, the Office denied appellant's claim finding that it was not established that the claimed medical condition was related to the established work-related events.

Appellant subsequently submitted February 1 and 7, 2007 reports from Dr. Carlos Garcia-Moral, a Board-certified orthopedic surgeon and an associate of Dr. Hieke. They noted treating appellant for cysts over her ring finger of her right hand which began in November 2006. On February 1, 2007 Dr. Garcia-Moral excised a mucoid cyst from the right ring finger. In an October 30, 2007 report, he noted appellant's complaint of pain at the carpometacarpal joint of both thumbs, worse on the right. Dr. Garcia-Moral indicated that x-rays revealed early osteoarthritis changes. He recommended immobilization with soft splints. On January 18, 2008 Dr. Hieke noted that appellant had degenerative joint disease in her terminal joints and she had a number of digits with mucoid cysts. He further noted that appellant was bothered by cysts in the left index and middle fingers. In a January 21, 2008 postoperative report, Dr. Hieke excised mucoid cysts and debrided underlying osteophytes at the distal interphalangeal joints of the index and middle fingers.

[1] The claim remained dormant until the Office began to develop the claim in 2008.

On July 31, 2008 appellant requested reconsideration. In support of her request, she submitted the employing establishment medical documents. A December 18, 2002 report from Dr. Edward Matheke, Board-certified in emergency medicine and the employing establishment physician, obtained a history that appellant had fallen on the previous day on false floors at work. He indicated that right wrist x-rays were negative. Dr. Matheke noted the need to rule out right wrist contusion and recommended wrist splints. On December 19, 2002 Sandra Johnson, a physician's assistant, noted appellant's complaint of right wrist swelling following her December 17, 2002 injury. She reported full range of motion in the wrist. On January 7, 2003 Ms. Johnson noted that appellant reported that she stopped wearing her wrist splint and that she had normal strength and no swelling. She found that appellant's right wrist sprain had resolved and advised that she could return to full duty without restrictions. In an October 10, 2007 record, Dianna Wright, a physician's assistant, noted appellant's complaint of right wrist pain and a cough. On April 23, 2008 Dr. Arnold Angelici, Board-certified in aerospace medicine, noted appellant's complaint of right wrist pain and her belief that it may be related to the fall on December 17, 2002. He stated that right wrist x-rays were negative and there was no evidence of soft tissue injury. Dr. Angelici diagnosed right carpal tunnel syndrome possibly due to repetitive motion or an aggravation of the prior fall.

On June 10, 2008 Dr. Tam performed a right long finger mucous cyst excision, a distal interphalangeal (DIP) joint arthrotomy and osteophyte removal, cubital tunnel release, anterior submuscular transposition, flexor pronator lengthening and CMC arthroplasty.

In a July 8, 2008 report, Dr. John Ellis, Board-certified in family medicine, noted treating appellant for a work injury sustained on December 17, 2002 affecting both arms and the right hip. He summarized the history of injury and the nature of treatment sought. Dr. Ellis also noted that appellant began developing cysts on the fingers of both hands in 2006. He indicated that appellant had current complaints of right hip pain, pain and numbness in both hands as well as tightness in her shoulders and neck. Examinations revealed mild tenderness of the thoracic and cervical spine while the postsurgical right elbow was tender over the ulnar nerve. There was decreased sensation of the right thumb and all the fingers consistent with cubital tunnel syndrome in the elbow and some carpal tunnel syndrome at the right wrist. Left elbow examination revealed hypertrophy of the medial epicondyle and tenderness over the ulnar nerve. The left wrist had positive Tinel and Phalen signs over the median and ulnar nerves. Appellant had pain and tenderness in the right hip with decreased range of motion. Dr. Ellis opined that her December 17, 2002 fall caused an acute right wrist and thumb injury resulting in degenerative arthritis, strain of the flexion and extensor tendons of the right and left wrists and forearm causing osteoarthritis and degenerative arthritis of the DIP joints of the fingers, strain of the medial epicondyle of the right elbow with ulnar nerve impingement, sprain of the left wrist with median and ulnar nerve impingement at the left wrist and strain of the left wrist and forearm causing tendinitis in the left elbow with ulnar nerve impingement. He advised that the original fall was a direct injury to the right hand, right thumb, right forearm and right hip. Dr. Ellis stated that appellant had more pain in the right hand and right hip and initially did not seek medical treatment for the left hand but treated it symptomatically. He stated that time, as well as appellant's continued working, resulted in the tendons in both forearms and wrists becoming tighter and retracted causing tendinitis at the wrists and elbows with carpal tunnel syndrome and median nerve impingement at the wrists and ulnar nerve impingement at the elbows. Dr. Ellis advised that an EMG was more positive for ulnar nerve impingement at the elbows, cubital tunnel syndrome, rather than the carpal tunnel findings noted on examination. He stated that

right wrist x-rays showed the sclerotic scaphoid was consistent with a bone island but was also consistent with an actual fall and contusion of the scaphoid bone on December 17, 2002. Dr. Ellis opined that, if appellant did not fall on December 17, 2002, she would have no difficulty with her elbows, hands, fingers or right hip. He noted that appellant had brief periods of total disability after each of her surgeries for diagnosed conditions.

By decision dated October 23, 2008, the Office modified its July 16, 2008 decision. It accepted that appellant's December 17, 2002 injury caused a right wrist contusion and sprain, which had resolved on January 7, 2003. The Office denied that the treatment appellant sought in 2007 and 2008 for her right wrist condition was due to the December 17, 2002 injury.

On October 29, 2008 appellant, through her attorney, requested an oral hearing. In a letter of the same date, counsel requested dismissal of the oral hearing request.

By decision dated November 18, 2008, the Office denied appellant's request for an oral hearing finding that she had already requested reconsideration and noted that the issue could be further addressed through a reconsideration request.[2]

LEGAL PRECEDENT

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct. The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury. With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation, to arise out of and in the course of employment and is compensable.[3]

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[4]

ANALYSIS

The Board finds that appellant submitted insufficient medical evidence to establish that her current diagnosed conditions are a consequence of her accepted December 17, 2002 injury. The Office found that the accepted right wrist contusion and sprain resolved by January 2003.

Appellant failed to submit sufficient medical evidence explaining how her accepted right wrist contusion and sprain caused or contributed to her current diagnosed conditions. Specifically, she failed to demonstrate how conditions such as right long finger mucous cyst,

[2] Appellant has not appealed this decision to the Board.

[3] *Debra L. Dillworth*, 57 ECAB 516 (2006).

[4] *J.J.*, 60 ECAB ___ (Docket No. 09-27, issued February 10, 2009).

degenerative CMC arthritis and bilateral cubital tunnel syndrome arose as a consequence of her accepted injury. Appellant first received treatment in 2007, same five years after the December 17, 2002 injury. The medical reports of record do not provide much in the way of history during this interval.

Dr. Ellis noted that he was treating appellant for a job-related injury sustained on December 17, 2002. He opined that appellant's fall caused conditions consisting of degenerative arthritis of the right wrist and thumb, osteoarthritis of the DIP joints of the fingers and ulnar nerve impingement of the right elbow and left wrist. Dr. Ellis further opined that appellant would not have difficulty with her elbows, hands, fingers and right hip if she did not fall on December 17, 2002. He opined that, but for the fall at work on December 17, 2002, appellant would not have any of her current diagnosed conditions. Although Dr. Ellis generally supported that appellant's need for treatment on July 8, 2008 was due to her December 17, 2002 injury, he did not sufficiently explain with medical rationale how her current diagnosed conditions arose from a sprain in 2002, that resolved by January 2003.[5] For example, he did not relate the pathophysiological processes by which the December 17, 2002 fall would have caused a lasting right wrist and thumb injury or how this would have caused degenerative arthritis and the various other diagnosed conditions. Furthermore, Dr. Ellis offered no detailed reasoning to explain how appellant's accepted right wrist injury would have caused left arm symptoms. He also did not address how appellant's history of mucous cysts and surgeries, as noted by Dr. Unsell, was a natural result of her fall. Dr. Ellis also failed to explain the delay in the onset of symptoms or provide a history of symptoms between 2003 to 2007 to support bridging symptoms relating back to the time of injury. The Board has held that an award of compensation may not be based on surmise, conjecture or speculation.[6]

On April 23, 2008 Dr. Angelici noted appellant's complaint of right wrist pain and diagnosed carpal tunnel syndrome. He listed appellant's belief that her condition was related to her December 17, 2002 fall and indicated that it was possible that her condition was due to either the fall or to repetitive motion. This report, at best, provides only equivocal support for a consequential medical condition. Dr. Angelici indicated that there was more than one possible cause of appellant's present condition.[7] He did not provide medical reasoning in which he unequivocally explained how the diagnosed carpal tunnel syndrome was the direct and natural result of the 2002 fall that caused the diagnosed right wrist contusion and sprain.

None of the other medical evidence of record specifically addresses how appellant's December 17, 2002 injury contributed to her diagnosed conditions in 2007 and 2008. Dr. Unsell noted on April 28, 2008 that appellant sustained a fall about six years prior, but he did not

[5] *S.S.*, 59 ECAB ___ (Docket No. 07-579, issued January 14, 2008) (the Board has held that medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof).

[6] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007).

[7] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

specifically address whether any diagnosed condition was a consequence of the injury.[8] This is particularly significant as the medical evidence contemporaneous with the 2002 fall indicates that appellant's accepted injury had resolved. Consequently, the medical evidence is not sufficient to meet appellant's burden of proof to establish that she sustained additional medical conditions as a consequence of her 2002 right wrist contusion and sprain.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained additional medical conditions as a consequence of her accepted right wrist contusion and sprain, which had resolved.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated October 23, 2008 is affirmed.

Issued: October 9, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[8] *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).